



PATENT
Y01-066

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF APPEALS

In re Application of: Machelles Daniels
Serial No. 10/092,067
Filed: March 5, 2002
For: Intravenous Tubing Cuff

: Date: December 29, 2004
: Group Art Unit: 3763
: Examiner: Roz Majorino

APPEAL BRIEF TRANSMITTAL LETTER

The Commissioner of Patents and Trademarks
Washington, D.C. 20231

Sir:

Enclosed is an Appeal Brief, in triplicate, for the above-identified patent application.

- ☐ Applicant petitions for an extension of time for month(s). If an additional extension of time is required, please consider this a petition therefore. Fee:
- ☐ An extension for month(s) has already been secured; the fee paid therefore of is deducted from the total fee due for the total months of extension now requested. Extension fee due with this request:
- ☒ Applicant believes that no extension of time is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition for extension of time.
- ☒ The Appeal Brief Fee was paid in a prior appeal in which there was no decision on the merits by the Board of Appeals.
- ☐ The Appeal Brief Fee is enclosed herewith. Fee = \$165.00
- ☐ The total fee due is .
- ☒ Address correspondence to the undersigned at 2095 Hwy. 211 NW, Suite 2-F, #356 Braselton, GA 30517.

This letter is submitted in triplicate.

Respectfully submitted,

Kenneth W. Float
Reg. No. 29,233

Encls.

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AF/3763
JW

PATENT
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Machelles Daniels
Serial No. 10/092,067
Filed: March 5, 2002
For: Intravenous Tubing Cuff

: Date: December 29, 2004
: Group Art Unit: 3763
: Examiner: Roz Majorino
: Batch No.:
: Patent No.:

**CERTIFICATE OF MAILING
UNDER 37 CFR 1.8**

The Commissioner of Patents and Trademarks
P. O. Box 1450
Alexandria, VA 22313-1450

Sir:

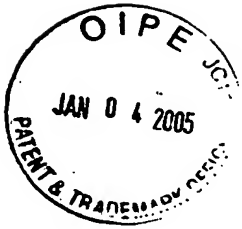
Identification of Transmitted Papers

Brief on Appeal in triplicate, Transmittal letter in triplicate, return receipt postcard

I hereby certify that the above-identified correspondence is being deposited with the United States Postal Service on December 29, 2004 with sufficient postage as first class mail, and is addressed to the Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.

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PATENT
PD-Y01-066

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF APPEALS**

Appeal No. _____

In re Application of: MACHELLE DANIELS

Serial No.: 10/092,067

Filed: March 5, 2002

For: INTRAVENOUS TUBING CUFF

APPELLANTS' BRIEF ON APPEAL

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF APPEALS**

In re Application of: MACHELLE DANIELS	: Date: December 29, 2004
Serial No.: 10/092,067	: Group Art Unit: 3763
Filed: March 5, 2002	:
For: INTRAVENOUS TUBING CUFF	: Examiner: Roz Ghafoorian

APPELLANT'S BRIEF ON APPEAL

Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Sir:

This is Appellants' brief on appeal from the decision of the Examiner in the Office Action dated June 10, 2004 finally rejecting Claims 1-14 in the above-identified patent application. This brief is submitted in accordance with the provisions of 37 C.F.R. §1.192.

REAL PARTY IN INTEREST

The real party in interest is the inventor, Machelles Daniels.

RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences known to appellants, appellant's legal representative, or the assignee which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

STATUS OF CLAIMS

Claims 1-14 are currently pending in this application and were finally rejected in the Office Action dated June 10, 2004. Appellant appeals from this final rejection.

STATUS OF AMENDMENTS

With regard to the status of amendments, no claim amendments were made in response to the final Office Action dated June 10, 2004. The Claims as they currently stand are presented in the Appendix.

SUMMARY OF INVENTION

The present invention provides for a single-patient disposable noninvasive intravenous (I.V.) tubing cuff 10 for use in securing an I.V. tube 23, or the like, to a patient. The disposable

I.V. tubing cuff 10 is removably secured to a patient's limb 22, such as a wrist, arm or leg, and holds the I.V. tube 23 without sliding on the patient's limb 22. The disposable I.V. tubing cuff 10 provides for an improvement over the use of adhesive tape to secure I.V. tubes 23 to a patient's limb.

The disposable I.V. tubing cuff 10 is a disposable medical device having a self-adjusting intravenous tubing cuff configuration. The device is constructed using hypo-allergenic components, secures and stabilizes I.V. tubing to the patient's limb 22 without adhesive material. The device thus preserves skin integrity and prevents dislodging of the I.V. tubing.

An exemplary disposable I.V. cuff 10 comprises a strip or layer of soft, porous, cloth-like material 11. A thin strip or layer of soft "non-skid" porous foam rubber 12 is secured to one side of the layer of porous, cloth-like material 11. The layer of soft porous foam rubber 12 touches the patient's skin.

The porous nature of both the cloth-like material 11 and the foam rubber 12 permit the cuff 10 to breath and allow oxygen to get to the patient's skin. The layer of foam rubber 12 prevents the cuff 10 from rolling around the limb 22 or sliding up and down the limb 22.

Opposite ends of the cuff 10 are secured together using hook and loop materials 13, 14, such as Velcro™ material, for example. A piece or layer of hook material 13 having hooks thereon is attached or secured to one end of the porous, cloth-like material 11 on the same side and adjacent to the layer of porous, foam material 12.

A layer of loop material 14 is attached or secured to the opposite end of the porous, cloth-like material 11 on a side that is opposite to the hook material 13. When the cuff 10 is wrapped around the patient's limb 22, hooks of the hook material 13 come into contact with and engage loops of the loop material 14 to hold the two ends of the cuff 10 together.

A bendable or foldable adhesive layer 15 is attached or secured to the porous, cloth-like material 11 on the same side as the layer of loop material 14. The adhesive layer 15 preferably has a protective layer 16 that covers adhesive which is removed to expose the adhesive. An I.V. is laid on the exposed adhesive and the adhesive layer 15 is wrapped around the I.V. to secure it to the cuff 10.

ISSUES

The first issue in this appeal is whether Claims 1, 2, 7, 8, and 11-14 are anticipated under 35 U.S.C. § 102(e) by US Patent No. 3,826,254 issued to Mellor. The second issue in this appeal is whether Claims 1-12 and 14 are anticipated under 35 U.S.C. § 102(e) by US Patent No. 3,826,254 issued to 6,645,185 issued to Bird et al. The third issue in this appeal is whether Claims 1-12 and 14 are anticipated under 35 U.S.C. § 102(b) by US Patent No. 5,941,856 issued to Kovacs et al. The fourth issue in this appeal is whether Claims 4 and 6 are obvious under 35 U.S.C. § 103(a) over US Patent No. 3,826,254 issued to Mellor in view of US Patent No. 5,342,317 issued to Claywell. The fifth issue in this appeal is whether Claims 5, 9 and 10

are obvious under 35 U.S.C. § 103(a) over US Patent No. 3,826,254 issued to Mellor in view of US Patent No. 5,879,335 to Martinez et al.

GROUPING OF CLAIMS

With regard to the specific grounds of rejection that are in issue, it is respectfully submitted that Claims 1-14 stand or fall together.

ARGUMENT

First issue

The first issue in this appeal is whether C Claims 1, 2, 7, 8, and 11-14 are anticipated by US Patent No. 3,826,254 issued to Mellor. It is respectfully submitted that the present invention is not anticipated by, nor is it obvious in view of the Mellor patent.

The Examiner's position is essentially that "Mellor teaches a tubing cuff for securing a tube with a layer of porous material a layer of layer of foam rubber secured to one side of the layer of porous; a reclosable fastener for securing distal needs of the cuff and a bendable adhesive layer having an adhesive attaché do the porous material." It is respectfully submitted that the Examiner's rejection is in error.

The Mellor patent discloses in its Summary of the Invention section that "the appliance comprises a lengthwise elongated pad having first and second elongated sections, the second section defining a flap extending lengthwise beyond the first section to be folded back over one side of the first section and over the needle, catheter or butterfly device oriented to extend crosswise of the pad; first pressure sensitive adhesive means on the opposite side of the first section to adhere the first section to a patient's body; and second pressure sensitive adhesive means on the pad to adhere the flap to the pad first section and to be adherent to the retained device oriented as defined. Also, peel-off backer strip means may typically be applied to the first and second pressure sensitive adhesive means, as will appear. As a result, rapid and firm retention of the needle or catheter to the patient's body is enabled by means of a single appliance or pad, with the danger of undesirable needle or catheter inadvertent rotation or disattachment substantially eliminated."

It is respectfully submitted that the Mellor pad is constructed as a single piece of material that is folded back upon itself to hold a needle, catheter or butterfly device. The Mellor patent discloses in column 2, lines 19-20 that the "pad may consist, for example, of a layer of porous plastic foam, as for example polyurethane". A "first pressure sensitive adhesive means" is used to adhere the pad to a patient's body. A "second pressure sensitive means" is used to adhere the folded flap (second section) to the first section.

Claim 1 calls for a tubing cuff for securing a tube to a limb of a patient, comprising:

a layer of porous, cloth-like material;
a layer of porous foam rubber secured to one side of the layer of porous, cloth-like material;

a reclosable fastener for securing distal ends of the cuff together; and
a bendable adhesive layer having an adhesive surface attached to the porous, cloth-like material on a side opposite to the layer of porous foam rubber.

With regard to Claim 1, it is respectfully submitted that there is no disclosure or suggestion in the Mellor patent regarding the use of two independent layers of different material to form the appliance. The Mellor patent clearly discloses that the appliance is made of a single layer of material ("a layer of porous plastic foam") that is folded back upon itself to secure a needle, etc. The present invention is made of two layers comprises a layer of porous foam rubber secured to one side of a layer of porous, cloth-like material. [Emphasis added]

It is respectfully submitted that there is no disclosure or suggestion in the Mellor patent regarding the use of "cloth-like material" in the appliance. The term "cloth" is not used in the Mellor patent.

There is no disclosure or suggestion in the Mellor patent regarding the use of "porous foam rubber" in the appliance. While the Mellor patent states that the "pad may consist, for example, of a layer of porous plastic foam, as for example polyurethane", it is respectfully submitted that this is not a disclosure or suggestion of the use of "porous foam rubber". Polyurethane is not a porous foam rubber material. Furthermore, the term "rubber" is not used in the Mellor patent.

Furthermore, the Mellor article is secured to a patient's body using adhesive. This is clearly not the case with the present invention, which secures and stabilizes I.V. tubing to a patient's limb without the use of adhesive material, as is stated in the Summary of the Invention section, for example, of the present application.

In view of the above discussion, and with specific regard to Claim 1, it is respectfully submitted that the Mellor patent does not disclose or suggest a tubing cuff comprising "a layer of porous, cloth-like material" and "a layer of porous foam rubber secured to one side of the layer of porous, cloth-like material", as is recited in Claim 1.

In view of the above discussion, and with regard to Claim 1, it is respectfully submitted that the Mellor patent does not disclose or suggest "a layer of porous foam rubber secured to one side of the layer of porous, cloth-like material", or "a bendable adhesive layer having an adhesive surface attached to the porous, cloth-like material on a side opposite to the layer of porous foam rubber", as is recited in Claim 1.

Therefore, it is respectfully submitted that the invention recited in Claim 1 is not disclosed or suggested by the Mellor patent. It is therefore respectfully submitted that the invention recited in Claim 1 is not anticipated by, nor is it obvious in view of the Mellor patent. Withdrawal of the Examiner's rejection of Claim 1 is respectfully requested.

With regard to Claim 2, it is respectfully submitted that the Mellor patent does not disclose or suggest the use of a microporous film layer as the primary strap layer. The terms "microporous" or "microporous film" are not used in the Mellor patent. Therefore, it is

respectfully submitted that the Mellor patent does not disclose or suggest that "the layer of porous, cloth-like material comprises microporous film", as is recited in Claim 2.

With regard to Claim 7, it is respectfully submitted that the Mellor patent does not disclose or suggest that "the layer of porous foam rubber comprises non-skid porous foam rubber", as is recited in Claim 7. These terms are not used in the Mellor patent.

With regard to Claims 8 and 11-14, it is respectfully submitted that the Mellor patent does not disclose or suggest the use of a reclosable fastener that comprises "hook and loop materials". There are no hook and loop materials discussed in the Mellor patent. The terms "hook" and "loop" are not used in the Mellor patent.

With regard to Claim 14, it is respectfully submitted that the Mellor patent does not disclose or suggest that a "layer of porous foam rubber is placed against the patient's limb and secured by the reclosable fastener." The Mellor patent clearly discloses that an adhesive layer is used to secure the elongated pad to the patient's body. The present invention expressly teaches away from the use of adhesive material to secure the tubing cuff to the body.

Dependent Claims 2, 7, 8, and 11-14 are also considered patentable based upon their dependence from allowable Claim 1. Therefore, it is respectfully submitted that the inventions recited in Claims 2, 7, 8, and 11-14 are not disclosed or suggested by the Mellor patent, and that the inventions in Claims 2, 7, 8, and 11-14 are not anticipated by, nor they obvious in view of the Mellor patent. Therefore, reversal of the Examiner's rejection of Claims 2, 7, 8, and 11-14 is respectfully requested.

Second issue

The second issue in this appeal is whether Claims 1-12 and 14 are anticipated by US Patent No. 3,826,254 issued to 6,645,185 issued to Bird et al. The Bird et al. patent corresponds to US Patent Publication No. 2002/0165495 cited by the Examiner.

The Examiner's position is that "Bird teaches a tubing cuff with a layer of porous material 12 a layer of foam rubber (plastic) 16 secured to one side of the layer porous material a closable fastener for securing distal ends of the cuff together, and a bendable adhesive layer 20 having an adhesive surface attached to the porous material on the opposite side to the layer of rubber/plastic. (Figures 1-10) where the fasteners comprise of hook and loop material. And the porous material is hypoallergenic."

The Bird et al. patent discloses "An improved anchoring appliance for detachably securing a catheter or other elongate or tube-like member to the limb of a body is disclosed. A primary strap with a slip-resistant surface is configured for adjustable encircling attachment to the limb. The slip-resistant surface directly engages the limb and includes material that resists slippage of the strap longitudinally along the limb. A secondary anchoring member attached to the strap is configured to detachably retainably engage and hold a catheter or other elongate or tube-like member in a desired position relative to the strap. The anchoring appliance preferably has at least its slip-resistant surface made of non-allergenic materials." (see Abstract)

The Bird et al. patent states at column 4, lines 34-51, that "The tube-retaining band ... has a primary strap portion 11 ... to which a tube device 3 is to be secured", and that "The primary strap 11 is preferably constructed of an elastic woven, knit, or webbing material", and that "an outer surface 12 of the band, illustrated as the upper-most surface in FIG. 2 is configured as a looped material, typically or brushed nylon or knit or woven loop material having loops extending outwardly from the surface". It is stated in Claim 18 that "said primary strap material is porous to air passage through said slip-resistant first surface".

With regard to reference numeral 13, the Bird et al. patent states at column 4, lines 51-58, that "The opposite or inner surface 13 of the primary strap 11 is configured to directly engage the skin of the limb or other member encircled by the primary strap 11. The inner surface 13 of the primary strap 11 is constructed of or may, or may not carry a soft lining material which may, for example, be in the form of a Helanca™ backing or other soft material which is comfortable and non-allergenic to the wearer's skin ..."

The Bird et al. patent states at column 5, lines 54-59, that "A slip-resistant material [identified by reference numeral 16] such as silicone may be applied to the inner surface 13 of the primary strap 11 to prevent or retard slippage between the inner surface 13 of the primary strap 11 and the outer limb surface to which the primary strap is affixed.", and at column 6, lines 6-11, that "In a preferred embodiment of the invention, the slip-resistant material 16 is in the nature of silicone material; however, it will be understood by those skilled in the art that other materials such as for example, neoprene or latex rubber, could equally well be used."

With regard to layer 24, the Bird et al. patent states at column 7, lines 40-46, that "A length of an elastic or nonelastic "hook" fastening material 24 is secured by stitching 25 to the outer surface 20b of the secondary strap 20 at its distal end 20c. The hook fastening material 24 is oriented relative to the secondary strap 20 such that its hook-like barbs face in the same direction as the inner surface 20a of the secondary strap 20."

However, as for the slip-resistant material used in the Bird et al. device, while it is stated that neoprene or latex rubber may be used, it is respectfully submitted that there is no specific disclosure or suggestion in the Bird et al. patent that the slip-resistant material comprises "a layer of porous foam rubber". The term "foam" is not used in the Bird et al. patent.

Furthermore, as for the fastener used in the Bird et al. device, it is stated at column 5, lines 15-20, that "A short strip 15 of "hook"-type fastener material ... is secured by stitching 14 to the inner surface 13 of the primary strap 11 adjacent its second end 11b, and longitudinally extends outwardly therefrom to a distal end 15a." It is stated at column 4, lines 46-48 of the Bird et al. patent that "an outer surface 12 of the band, ... is configured as a looped material." Thus, the entire outer surface of the primary strap is made of loop material. It is stated in paragraph 41 that "the fastener material 15 ... overlaps and engages the loops of the outer surface 12 of the primary strap as the strap encircles the limb."

It is stated at column 7, lines 1-20, that the "secondary strap portion 20 is preferably configured of an elastic webbing material", that "The inner surface 20a of the secondary strap

20 is entirely or partially lined with a layer of slip-resistant material such as silicone, neoprene or latex", that In the preferred embodiment, the slip-resistant material is of ribbed configuration as illustrated in FIG. 4, wherein the ribs extend longitudinally of the secondary strap 20.", and that "In the preferred embodiment, the secondary strap portion material of the preferred embodiment is generally referred to as a woven or knit elastic that is commercially available." It is stated in 7, lines 40-44, that "A length of an elastic or nonelastic "hook" fastening material 24 is secured by stitching 25 to the outer surface 20b of the secondary strap 20 at its distal end 20c."

Thus, it is clear from reading the Bird et al. patent that the secondary strap portion 20 which is used to secure a tube is not made of bendable adhesive material. There is no disclosure or suggestion in the Bird et al. patent regarding the use of a bendable adhesive layer to secure the tube. In fact,, the term "adhesive" is not used in the Bird et al. patent.

In view of the above discussion, and with regard to Claim 1, it is respectfully submitted that the Bird et al. patent does not disclose or suggest "a layer of porous foam rubber secured to one side of the layer of porous, cloth-like material", or "a bendable adhesive layer having an adhesive surface attached to the porous, cloth-like material on a side opposite to the layer of porous foam rubber", as is recited in Claim 1.

Therefore, it is respectfully submitted that the invention recited in Claim 1 is not disclosed or suggested by the Bird et al. patent. It is therefore respectfully submitted that the invention recited in Claim 1 is not anticipated by, nor is it obvious in view of the Bird et al. patent. Withdrawal of the Examiner's rejection of Claim 1 is respectfully requested.

With specific regards to Claim 2, while Claim 13 of the Bird et al. patent states that "said primary strap material is porous to air passage through said first inner surface", this is the only use of the term "porous" in the Bird et al. patent, and there is no specific disclosure relating thereto in the specification. Furthermore, it is respectfully submitted that the Bird et al. patent does not disclose or suggest the use of a microporous film layer as the primary strap layer. The terms "microporous" or "microporous film" are not used in the Bird et al. document. Therefore, it is respectfully submitted that the Bird et al. patent does not disclose or suggest that "the layer of porous, cloth-like material comprises microporous film", as is recited in Claim 2.

With specific regards to Claim 7, while the Bird et al. patent states at column 5, lines 54-55, that a "slip-resistant material such as silicone may be applied to the inner surface 13 of the primary strap 11", and that "the slip-resistant material 16 is in the nature of silicone material; however, it will be understood by those skilled in the art that other materials such as for example, neoprene or latex rubber, could equally well be used," it is respectfully submitted that the Bird et al. patent does not disclose or suggest anything regarding the use of a "layer of non-skid porous foam rubber", as is recited in Claim 7.

With regards to Claim 14, it is respectfully submitted that the Bird et al. patent does not disclose or suggest that a layer of porous foam rubber is placed against a patient's limb and secured

by a reclosable fastener, and wherein a tube is laid on exposed adhesive of the bendable adhesive layer, which bendable adhesive layer is wrapped around the tube to secure it to the cuff. No adhesive layer is disclosed or suggested in the Bird et al. patent

Therefore, it is respectfully submitted that the Bird et al. patent does not disclose or suggest a tubing cuff "wherein the layer of porous foam rubber is placed against the patient's limb and secured by the reclosable fastener, and wherein a tube is laid on exposed adhesive of the bendable adhesive layer, which bendable adhesive layer is wrapped around the tube to secure it to the cuff", as is recited in Claim 14.

Dependent Claims 2-12 and 14 are also considered patentable based upon their dependence from allowable Claim 1. Therefore, it is respectfully submitted that the inventions recited in Claims 2-12 and 14 are not disclosed or suggested by the Bird et al. patent, and that the inventions in Claims 2-12 and 14 are not anticipated by, nor they obvious in view of the Bird et al. patent. Therefore, reversal of the Examiner's rejection of Claims 2- 12 and 14 is respectfully requested.

Third issue

The third issue in this appeal is whether Claims 1-12 and 14 are anticipated by US Patent No. 5,941,856 issued to Kovacs et al.

The Kovacs et al. patent discloses a "medical conduit holder for releasably securing and reattaching a medical conduit, for example, a Foley catheter, to the limb of a patient. The holder includes a non-stretchable stabilizing member having a looped fabric surface, and attached to a stretchable primary strap to form an enclosed nonstretchable area of the primary strap. The primary strap is configured for attachment to the limb of the patient. The holder further includes a secondary strap attached to both the platform and the primary strap, preferably at the center of the secondary strap. The secondary strap has a first portion with a window, and an engagement portion dimensioned to loop around the conduit and fit through the window. In use, the engagement portion is looped over the medical conduit and through the window, such that the hooked surface of the engagement portion contacts the looped surface of the stabilizing member in order to secure the medical conduit. The first portion is then likewise looped over the medical conduit, such that the hooked surface of the first portion contacts the looped fabric surface of the platform. The stabilizing member resists buckling in order to retain the medical conduit in place, with little movement of the conduit relative to the primary strap." (see Abstract)

With regard to Claim 1, it is respectfully submitted that the Kovacs et al. patent does not disclose or suggest the use of a layer of porous foam rubber secured to one side of a layer of porous, cloth-like material, as is recited in Claim 1. The Kovacs et al. patent does not use the terms "porous", "foam", "rubber", "porous foam", or "porous foam rubber".

It is respectfully submitted that the Kovacs et al. patent does not disclose or suggest the use of a bendable adhesive layer having an adhesive surface attached to the porous, cloth-like material on a side opposite to the layer of porous foam rubber, as is recited in Claim 1. The Kovacs et al. patent does not use the terms "adhesive" or "adhesive surface".

The Kovacs et al. patent does not disclose or suggest that the porous foam rubber layer is disposed on one side of a layer of porous, cloth-like material while a bendable adhesive layer is disposed on an opposite side of the layer of porous, cloth-like material.

Also, as is stated at column 5, lines 5-15 of the Kovacs et al. patent "a secondary strap 18" that "includes a first rectangular portion 42 having a [window 44] therethrough, and a second, elongated engagement portion 46 which is preferably formed as an integral member with the first portion and preferably sized so as to be insertable within window 44." It is respectfully submitted that this secondary strap 18 does not correspond to a bendable adhesive layer, as is recited in Claim 1.

In view of the above discussion, and with regard to Claim 1, it is respectfully submitted that the Kovacs et al. patent does not disclose or suggest "a layer of porous foam rubber secured to one side of the layer of porous, cloth-like material", or "a bendable adhesive layer having an adhesive surface attached to the porous, cloth-like material on a side opposite to the layer of porous foam rubber", as is recited in Claim 1.

Therefore, it is respectfully submitted that the invention recited in Claim 1 is not disclosed or suggested by the Kovacs et al. patent. It is therefore respectfully submitted that the invention recited in Claim 1 is not anticipated by, nor is it obvious in view of the Kovacs et al. patent. Withdrawal of the Examiner's rejection of Claim 1 is respectfully requested.

With regard to Claims 2-5, it is respectfully submitted that the Kovacs et al. patent does not disclose or suggest that "the layer of porous, cloth-like material comprises microporous film". There is no disclosure or suggestion of using microporous film contained in the Kovacs et al. patent.

With regard to Claim 7, it is respectfully submitted that the Kovacs et al. patent does not disclose or suggest that "the layer of porous foam rubber comprises non-skid porous foam rubber". These terms are not used in the Kovacs et al. patent.

With regard to Claim 13, it is respectfully submitted that the Kovacs et al. patent does not disclose or suggest that the "adhesive layer has a protective layer that covers adhesive material and which is removed to expose the adhesive material of the adhesive layer." There is no adhesive layer discussed in the Kovacs et al. patent.

With regards to Claim 14, it is respectfully submitted that the Kovacs et al. patent does not disclose or suggest that a layer of porous foam rubber is placed against a patient's limb and secured by a reclosable fastener, and wherein a tube is laid on exposed adhesive of the bendable adhesive layer, which bendable adhesive layer is wrapped around the tube to secure it to the cuff. No adhesive layer is disclosed or suggested in the Kovacs et al. patent

Dependent Claims 2-12 and 14 are also considered patentable based upon their dependence from allowable Claim 1. Therefore, it is respectfully submitted that the inventions recited in Claims 2-12 and 14 are not disclosed or suggested by the Kovacs et al. patent, and that the inventions in Claims 2- 12 and 14 are not anticipated by, nor they obvious in view of the Kovacs et al. patent. Therefore, reversal of the Examiner's rejection of Claims 2-12 and 14 is respectfully requested.

Fourth issue

The fourth issue in this appeal is whether Claims 4 and 6 are obvious over US Patent No. 3,826,254 issued to Mellor in view of US Patent No. 5,342,317 issued to Claywell. The teachings of the Mellor patent have been discussed above. The Examiner has admitted that the Mellor patent does not disclose a hypoallergenic porous layer. The Claywell patent is cited as teaching a tubing cuff with a hypoallergenic layer, which the Examiner concluded could have been used in the Mellor device.

It is respectfully submitted that the Mellor and Claywell references, taken singly or together, do not disclose or suggest the invention recited in Claim 1, for the reasons argued above. Therefore, it is respectfully submitted that the Mellor and Claywell patents, taken singly or together, do not disclose or suggest the inventions recited in Claims 4 and 6.

Furthermore, dependent Claims 4 and 6 are considered patentable based upon their dependence from allowable Claim 1. Therefore, it is respectfully submitted that the inventions recited in Claims 4 and 6 are not obvious in view of the Mellor or Claywell patents, taken singly or together. Reversal of the Examiner's rejection of Claims 4 and 6 is respectfully requested.

Fifth issue

The fifth issue in this appeal is whether Claims 5, 9 and 10 are obvious over US Patent No. 3,826,254 issued to Mellor in view of US Patent No. 5,879,335 to Martinez et al. The teachings of the Mellor patent have been discussed above. The Examiner admitted that the Mellor patent does not teach the use of a woven loop with a durable backing layer. The Martinez et al. patent is cited as teaching a woven loop with a durable backing layer, which the Examiner concluded could have been used in the Bird et al. device.

It is respectfully submitted that the Mellor and Martinez et al. references, taken singly or together, do not disclose or suggest the invention recited in Claim 1, for the reasons argued above. Therefore, it is respectfully submitted that the Mellor and Martinez et al. patents, taken singly or together, do not disclose or suggest the inventions recited in Claims 5, 9 and 10.

With regard to Claim 5, it is respectfully submitted that the Mellor and Martinez et al. patents, taken singly or together, do not disclose or suggest a tubing cuff that comprises a laminate of microporous film and a polypropylene nonwoven material. These terms are not used in the cited patents.

With regard to Claims 9 and 10, it is respectfully submitted that there is no specific teaching contained in the Mellor and Martinez et al. patents that would suggest their combination to add hook and loop materials to the Mellor appliance. It is respectfully submitted that the Examiner has used inappropriate hindsight reconstruction, using the teachings of the cited references in light of Applicant's teachings to arrive at the inventions recited in Claims 9 and 10.

In addition, dependent Claims 5, 9 and 10 are considered patentable based upon their dependence from allowable Claim 1. Therefore, it is respectfully submitted that Claims 5, 9 and

10 are not obvious in view of the Mellor or Martinez et al. patents, taken singly or together. Reversal of the Examiner's rejection of Claims 5, 9 and 10 is respectfully requested.

In view of the above, it is respectfully submitted that Claims 1-14 are not anticipated by, nor are they obvious in view of, the cited references, taken singly or together, and are therefore patentable. Therefore, it is respectfully submitted that the rejection of Claims 1-14 by the Examiner was erroneous, and reversal of the Examiner's decision is respectfully requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Kenneth W. Float', written over a horizontal line.

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APPENDIX

Claims 1-14 presented below are pending in this application.

1. A tubing cuff for securing a tube to a limb of a patient, comprising:
a layer of porous, cloth-like material;
a layer of porous foam rubber secured to one side of the layer of porous, cloth-like material;
5 a reclosable fastener for securing distal ends of the cuff together; and
a bendable adhesive layer having an adhesive surface attached to the porous, cloth-like material on a side opposite to the layer of porous foam rubber.
2. The tubing cuff recited in Claim 1 wherein the layer of porous, cloth-like material comprises microporous film.
3. The tubing cuff recited in Claim 2 wherein the microporous film comprises polypropylene material.
4. The tubing cuff recited in Claim 2 wherein the microporous film is hypoallergenic.
5. The tubing cuff recited in Claim 2 wherein the microporous film comprises a laminate of microporous film and a polypropylene nonwoven material.
6. The tubing cuff recited in Claim 1 wherein the layer of porous, cloth-like material is hypoallergenic.
7. The tubing cuff recited in Claim 1 wherein the layer of porous foam rubber comprises non-skid porous foam rubber.
8. The tubing cuff recited in Claim 1 wherein the reclosable fastener comprises hook and loop materials.
9. The tubing cuff recited in Claim 8 wherein the hook and loop materials comprise a nonwoven loop with a film backing.
10. The tubing cuff recited in Claim 8 wherein the hooks are attached to a durable backing layer.

11. The tubing cuff recited in Claim 8 wherein the reclosable fastener comprises knitted loop and hook materials.

12. The tubing cuff recited in Claim 1 wherein the reclosable fastener comprises a layer of hook material having hooks thereon attached to one end of the porous, cloth-like material on the same side and adjacent to the layer of porous foam rubber; and a layer of loop material attached to an opposite end of the porous, cloth-like material on a side that is opposite to the hook material.

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13. The tubing cuff recited in Claim 1 wherein the adhesive layer has a protective layer that covers adhesive material and which is removed to expose the adhesive material of the adhesive layer.

14. The tubing cuff recited in Claim 1 wherein the layer of porous foam rubber is placed against the patient's limb and secured by the reclosable fastener, and wherein a tube is laid on exposed adhesive of the bendable adhesive layer, which bendable adhesive layer is wrapped around the tube to secure it to the cuff.